

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EDWARD J. WILEY,

Plaintiff,

vs.

LAS VEGAS POLICE, *et al.*,

Defendants.

Case No.: 2:23-cv-00141-GMN-EJY

ORDER

Pending before the Court is the January 30, 2023, Report and Recommendation (“R&R”), (ECF No. 4), of United States Magistrate Judge Elayna J. Youchah, which recommends, among other things, (1) providing Plaintiff Edward J. Wiley (“Plaintiff”) an opportunity to file an amended complaint that addresses the deficiencies noted in the R&R, and (2) dismissing the case without prejudice if Plaintiff chooses not to file an amended complaint by a deadline imposed by the Court.

Also pending before the Court is the May 9, 2023, R&R, (ECF No. 5), of Magistrate Judge Youchah which recommends that this matter “be dismissed without prejudice for failure to comply with the Court’s January 30, 2023 Order.”

When considering dispositive matters, “the magistrate judge may go no further than issuing a report and recommendation to the district court[.]” *See Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir. 2015). The district court reviews the magistrate judge’s recommendations *de novo*. *Id.* The district court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); D. Nev. R. IB 3-2(b). A party may file specific written objections to the findings and recommendations of the magistrate judge pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D. Nev. R. IB 3-2.

1 Where a party fails to object, however, the district court is not required to conduct “any review
2 at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149
3 (1985) (citing 28 U.S.C. § 636(b)(1)). Indeed, the Ninth Circuit has recognized that a district
4 judge is not required to review a magistrate judge’s report and recommendation where no
5 objections have been filed. *See, e.g., United States v. Reyna–Tapia*, 328 F.3d 1114, 1122 (9th
6 Cir. 2003). Neither party filed an objection to either the January 30, 2023, R&R or the May 9,
7 2023, R&R.

8 The January 30, 2023, R&R recommended that Plaintiff be given the opportunity to file
9 an amended complaint to address the deficiencies identified in the R&R, and further
10 recommended that Plaintiff be given until March 1, 2023, to submit an amended complaint.
11 (January 30, 2023, R&R 3:3–7, ECF No. 4). However, before this recommendation had been
12 adopted by the undersigned, the Magistrate Judge issued a second R&R on May 9, 2023,
13 recommending that the matter be dismissed “for failure to comply with the Court’s January 30,
14 2023 Order.” (May 9, 2023, R&R 1:19–20, ECF No. 5). Specifically, Magistrate Judge
15 Youchah found that Plaintiff failed to file an amended complaint by the March 1, 2023,
16 deadline.

17 A magistrate judge may—but is not required to—recommend that a party be provided an
18 opportunity to file an amended complaint curing any deficiencies in the original complaint
19 highlighted by the magistrate judge. Indeed, Magistrate Judge Youchah’s January 30, 2023,
20 Order notes that “it is further recommended that . . . Plaintiff be given one opportunity file an
21 amended complaint that addresses the deficiencies identified above.” (January 30, 2023, R&R
22 3:6–7). A recommendation, however, must be adopted by the district judge before the party is
23 required to comply with the recommendation. *See also Anderson v. Nevada*, No. 22-16856,
24 2023 WL 3092307, at *1 (9th Cir. Apr. 26, 2023) (vacating and remanding order declaring
25 plaintiff a vexatious litigant by adopting in full magistrate judge’s recommendation without

1 first providing plaintiff an opportunity to show cause why he should not be deemed a vexatious
2 litigant). A plaintiff cannot be penalized for failing to follow a recommendation of a magistrate
3 judge that was not yet adopted by the district judge. The R&R issued in May incorrectly found
4 that Plaintiff failed to comply with the January R&R because the undersigned never adopted,
5 and therefore never ordered, Plaintiff to file an amended complaint by a certain date. The
6 Court thus REJECTS the May R&R recommending dismissal as premature.

7 Accordingly,

8 **IT IS HEREBY ORDERED** that the January 30, 2023, Report and Recommendation,
9 (ECF No. 4), is **ADOPTED in full**.

10 **IT IS FURTHER ORDERED** that Plaintiff shall have until July 28, 2023, to file an
11 amended complaint addressing the deficiencies noted in the January 30, 2023, Report and
12 Recommendation. Failure to file an amended complaint will result in the matter being
13 dismissed without prejudice.

14 **IT IS FURTHER ORDERED** that the May 9, 2023, Report and Recommendation
15 (ECF No. 5) is **REJECTED**.

16 Dated this 29 day of June, 2023.

17
18 

19 _____
20 Gloria M. Navarro, District Judge
21 United States District Court
22
23
24
25